

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SEARLES VALLEY MINERALS
OPERATIONS, INC., et al.

Plaintiffs and Appellants,

v.

STATE BOARD OF EQUALIZATION,

Defendant and Respondent.

D049905

(Super. Ct. No. GIC840761)

MODIFICATION ORDER AND
ORDER DENYING PETITION
FOR REHEARING

NO CHANGE IN JUDGMENT

THE COURT:

The petition for rehearing is denied. The opinion is modified as follows:

1. On page 2, line 16, add the words "its purchase" before the word "is".
2. On page 3, line 5, delete the words "for the coal they purchased" and replace them with "on their purchases of the coal". On page 3, line 9, delete the words "and was taxable as such" and replace them with ", making its purchase subject to the use tax."
3. On page 12, line 17, replace the word "are" with "is".

4. On page 15, lines 20 and 21, delete the words "Nothing in Board Regulation section 1525(a)'s description of what property is subject to the use tax" and replace them with "Nothing in the regulation".

5. On page 16, line 13, delete the words "the foregoing statutory provisions would be mere surplusage in this context and would not promote what the Taxpayers admit is" and replace them with the words "so too would *any* fuel used to produce steam in generating electricity. Absent the existence of a specific exemption so providing, we reject the Taxpayers' argument, which would render the foregoing statutory provisions as mere surplusage in this context and run contrary to". On page 16, line 18, add the words "sales of" after the word "because". On page 16, line 21, add the word "generally" after the word "are".

There is no change in the judgment.

McINTYRE, Acting P. J.

Copies to: All parties